

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12812 OF 1999

DATED 08th NOVEMBER, 2006

BETWEEN

Dasari Chilkamma and others.

... Petitioners

and

The State of Andhra Pradesh rep.by Secretary to Government,
Revenue Department, Secretariat, Hyderabadn and others.

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12812 OF 1999

ORDER:

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The land admeasuring Acs.5.00 in survey No.194 situated at Badepally village, Jedcharla Mandal, Mahaboobnagar District, was assigned to one Dasari Kistaiah in 1957. He is statedly cultivating the land till his death in 1981. After his death, first petitioner, who is wife of late Kistaiah, and petitioners 2 to 5, sons of Kistaiah, succeeded to the land and therefore, names were also duly mutated in 1984. The petitioners are cultivating the land. The third respondent issued notice, dated 09.03.1998, calling upon the first petitioner to vacate the land as the land has to be resumed for public purpose. Aggrieved by the same, present writ petition is filed.

Learned counsel for the petitioners placed strong reliance on the decision of Larger Bench of seven learned Judges of this court in **LAO-cum-RDO, Chevella Division, Domalaguda, Hyderabad v Mekala Pandu**^[1]. Learned Assistant Government Pleader for Revenue does not dispute that when the land assigned is resumed, the assignee is entitled for compensation in accordance with Land Acquisition Act, 1894.

In **S.Yedukondalu v District Collector, West Godavari District**^[2], this Court, after referring to a catena of decisions, while dealing with the question of dispensing with the enquiry under Section 5-A of the Act, held that there is always urgency for acquiring land for providing house sites to weaker sections and therefore, enquiry under Section 5-A of the Act can be dispensed with. The relevant observations are as under.

The purport of sub-section (2) of Section 17 as amended by A.P.Legislature, in simple terms is that in certain cases, *inter alia*, for construction of a building in a village for the common use of inhabitants of the village and/or for provision of dwelling house for the poor, the Collector can always acquire immediate possession of the land. This necessarily would mean that after issue of notification under Section 4(1) of the Act, the District Collector or the State have to invoke the powers under sub-section (4) of Section 17 of the Act and then take possession under sub-section (2) of Section 17 of the Act. Thus, the

Legislature itself has visualized that whenever there is an acquisition for provision of house sites or dwelling house to the poor, the District Collector can always legitimately invoke the power under Section 17(4) of the Act and dispense with enquiry under Section 5-A of the Act. In such a situation, if enquiry under Section 5-A of the Act is mandated, the same would be ignoring sub-section (2) of Section 17 of the Act and amounts to issue of Mandamus contrary to law. Such a prerogative writ cannot be issued to any public authority either to ignore law or act contrary to law. An analysis of the decisions cited by the learned Assistant Government Pleader also support the view that whenever there is a need for acquiring the land for providing house sites to the weaker sections, there is always urgency and enquiry under Section 5-A of the Act can be dispensed with.

Following the same, the writ petition is accordingly disposed of.
No costs.

(V.V.S.RAO,J)

08.11.2006.
pln

[\[1\]](#) 2004 (2) ALD 451 (LB)

[\[2\]](#) 2006 (5) ALT 818